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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/605,548

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Stephen J. Brown

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HEALTH HERO NETWORK, INC.  
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EXAMINER

LUBIN, VALERIE

ART UNIT

PAPER NUMBER

3626

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/605,548	<b>Applicant(s)</b> BROWN, STEPHEN J.	
	<b>Examiner</b> VALERIE LUBIN	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10-23, 25, 26 and 28-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10-23, 25, 26, 28-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/3/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgements***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Claims 1-5, 7, 8, 10-23, 25, 26, 28-49 are pending

For reference purposes, the document paper number is 20090226

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

3. The rejection of claims 1-18 under 35 USC § 112, 2<sup>nd</sup> paragraph is withdrawn in light of Applicant's amendment.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 7, 8, 11-13, 17, 19, 25, 26, 29-31, 35, 37-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Chaco U.S. Patent No. 5,465,082.

6. With regards to claim 1, Chaco teaches a health monitoring system comprising: a central server configured to receive health-related data (Fig. 4 element 430); a monitoring device for monitoring a condition indicative of a physical well-being of a person and for producing digitally encoded health signals, located near said person and remotely located from said server (Fig. 4 element 410); a programmable-microprocessor-based interactive unit separate from said monitoring device, located remotely from said server (Fig. 4 element 414), said microprocessor including a video display (Col. 15 lines 1-4); and a memory (Col. 14

lines 26-28); and a signal interface connectable in signal communication with said programmable microprocessor-based interactive unit and said monitoring device (Fig. 4 element 418).

Claim 19 is rejected under the analysis of claim 1.

7. For claims 7 and 8, Chaco discloses a handheld or portable device or computer (Col. 15 lines 25; col. 20 lines 16-28).

Claims 25, 26, 37 are rejected under the analysis of claims 7 and 8.

8. Claim 11 is rejected as Chaco recites processing health related data into at least one report (Col. 30 lines 16-18).

Claim 29 is rejected under the analysis of claim 11.

9. Claims 12 and 13 are rejected under the analysis of claim 11, as the data contained in the report is non-functional descriptive material that does not further limit the system of claim 1 (In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II).

Claims 30, 31 are rejected under the above analysis.

10. Claim 17 is rejected as Chaco discloses the system being configured to cause a message to be transmitted to a specific patient (Col. 18 line 67, col. 19 lines 1-2).

Furthermore, the wherein clause of the claim merely states the result of the limitations in the claim and adds nothing to the patentability or substance of the claim ((Texas Instruments Inc. v. International Trade Commission 26, USPQ2d 1010 (Fed. Cir. 1993); Griffin v. Bertina, 62

USPQ2d 1431 (Fed. Cir. 2002); Amazon.com Inc. v. Barnesandnoble.com Inc., 57 USPQ2d 1747 (CAFC 2001)).

Claim 35 is rejected under the analysis of claim 17.

11. Claim 38 is rejected, as Chaco discloses RF transmission (Col. 9 lines 59-61).

Claim 39 is rejected under the analysis of claim 38.

12. Claim 40 is rejected as Chaco recites a program storage device (Col. 10 lines 10-11).

13. Claim 41 is rejected as Chaco discloses a storage device connecting to a receptacle of a microprocessor device (Col. 13 lines 41-42).

Claim 42 is rejected under the analysis of claim 41.

14. Claim 43 is rejected, as Chaco discloses a memory comprising a name, address, phone number etc. (Col. 10 lines 51-54). Furthermore, the data contained in the memory is non-functional descriptive material that does not further limit the system (In re Swineheart, 169 USPQ 226; In re Schreiber, 44 USPQ2d 1429 (Fed. Cir. 1997)).

15. With respect to claim 44, Chaco discloses prompting a user to enter information; receiving the entered information and communicating the information to a central server (Col. 30 lines 64-67);

Claim 46 is rejected under the analysis of claim 44.

16. Claim 45 is rejected, as Chaco discloses at least one health care computer, remotely located from and in signal communication with the central server (Fig. 4 element 420).

Claim 47 is also rejected under the analysis of claim 45.

17. Claim 48 is rejected as Chaco discloses health measurements including blood pressure (Col. 13 lines 54-55; col. 14 lines 37-39).

Claim 49 is rejected under the analysis of claim 48.

### ***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 2-5, 10, 14-16, 18, 20-23, 28, 32-34, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaco U.S. Patent No. 5,465,082 in view of Kretsch et al. U.S. Patent No. 5,233,520.

20. For claim 2, Chaco discloses the programmable microprocessor-based interactive unit receiving user information (Col. 14 lines 50-54). He does not specifically recite quantitative units; however Kretsch does (Col. 3 lines 58-63). It would have been obvious to one of ordinary skill in the art to combine the teachings of Chaco and Kretsch in order to facilitate

the reading of the data. Furthermore, the type of data received and stored is non-functional descriptive material that does not further limit the system (In re Swineheart, 169 USPQ 226; In re Schreiber, 44 USPQ2d 1429 (Fed. Cir. 1997)).

Claims 3-5, 20-23 are rejected under the analysis of claim 2.

21. With respect to claim 10, Examiner takes Official Notice that a removable memory was old and well known in the art at the time the invention was made. It would therefore, have been obvious to one of ordinary skill in the art to combine the prior art in order to facilitate data movement and accessibility for different users of the inventions.

Claim 28 is rejected under the analysis of claim 10.

22. Claim 14 is rejected, as Kretsch recites transmitting at least one message for display on at least one microprocessor device's display. (Col. 4 lines 49-50; col. 23 lines 24-27).

Claims 32 is rejected under the analysis of claim 14.

23. For claim 15, the information contained in the message displayed is non-functional descriptive material that does not further limit the system's ability to display messages (In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II). Claim 15 therefore does not further limit the system of claim 14 and is rejected under the analysis of claim 14. Furthermore, Kretsch discloses the displaying instructions (Col. 4 lines 49-50).

Claims 16, 33 and 34 are rejected under the analysis of claim 15.



24. For claim 18, Examiner takes Official Notice that a system configured to enable programs to be provided from the server for storage in a memory of and execution by at least one microprocessor device was old and well known in the art at the time the invention was made. It would have been obvious to combine the prior art in order to enable components of the system to perform their respective functions.

Claim 36 is rejected under the analysis of claim 18.

### ***Conclusion***

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALERIE LUBIN whose telephone number is (571)270-5295. The examiner can normally be reached on Monday-Friday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher L. Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VL

/C. Luke Gilligan/  
Supervisory Patent Examiner, Art Unit 3626